

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARTHUR MATHEWS,

Case No. 23-11416

Plaintiff,

F. Kay Behm

v.

United States District Judge

DETROIT POLICE DEPARTMENT, in
their official capacity, DOES 1-10 in
their individual and official capacities,

Defendants.

_____ /

ORDER REGARDING DEFENDANTS' MOTION TO DISMISS (ECF No. 8)

On June 14, 2023, Plaintiff filed the present lawsuit against Defendants alleging violations of the Americans with Disabilities Act of 1990 (ADA). (ECF No. 1). On September 21, 2023, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 8). Specifically, Defendants argue that dismissal is warranted for “lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, failure to state a claim upon which relief can be granted, and failure to join a party under Rule 19.” *Id.*, PageID.29-30.

Fed. R. Civ. P. 15(a)(2) states that courts should grant leave to amend a complaint “when justice so requires.” Plaintiff has not filed an amended

complaint. In the court's view, under the present circumstances, allowing Plaintiff an opportunity to amend serves the ends of justice. Accordingly, without expressing any view regarding the merits of the motion to dismiss, the court will afford Plaintiff the opportunity to cure any purported deficiencies by filing an amended complaint. The court **ORDERS** that any amended complaint must be filed within 14 days of entry of this Order or within the time remaining for Plaintiff to respond to the motion, whichever is longer.

As a result, Plaintiff is presented with a choice of how to proceed, given that a motion to dismiss has been filed. Plaintiff may file an amended complaint, in which case the court will deny without prejudice the currently pending motion to dismiss as moot or Plaintiff may file a response to Defendants' motion. If Plaintiff elects not to file an amended complaint and instead files a substantive response, the court will rule on the pending motion and any dismissal may be with prejudice.

IT IS SO ORDERED.

Date: October 5, 2023

s/F. Kay Behm

F. Kay Behm

United States District Judge